USES OF THE SEAS. Edited by Edmund A. Gullion. Eaglewood Cliffs, N.J.: Prentice-Hall. 1968. Pp. xv and 202. $2.45.

THE LAW OF THE SEA. By D. W. Bowett. Manchester: Manchester University Press; Dobbs Ferry, N.Y.: Oceana. 1967. Pp. vii and 117. $5.00.

THE LAW OF THE SEA. Edited by Lewis M. Alexander. Columbus: Ohio State University Press. 1967. Pp. xix and 321. $12.50.

INTERNATIONAL CUSTOM AND THE CONTINENTAL SHELF. By Zdenek J. Slouka. The Hague: Martinua Nijhoff. 1968. Pp. xii and 186. Gs.25.20.

The recent passage of the *Manhattan* through Canada's northern waters, together with fears that if man cannot capture the resources of the seas he may starve, lends interest to the group of books dealing with the use and the law of the seas here under consideration. The American Assembly's compilation entitled *Uses of the Seas* is not directed to lawyers, but does contain two essays which deal with legal problems relating to the sea as well as others which are of more general appeal—oceanography and resources, the consequences of Britain's changing naval strategy and the impact of Soviet and United States strategies and policies.

Professor Henkin's paper on 'Changing Law for the Changing Seas' serves as a useful summary and introduction to the other works, but it needs spelling out if it is to be of any use to the law student, for there is little value in a statement that "[t]he 1958 Convention gives the coastal nation sovereign rights on its continental shelf (as defined) for the purpose of exploring and exploiting its resources[1]. . ." this leaves the reader completely unaware of what the continental shelf is and how unsatisfactory the definition is proving in practice. The definition of the shelf as it appears in the Convention is fully discussed in the other works under review, and Dr. Bowett points out that the decision to use technological feasibility as the measuring rod for the outer limit of the shelf means that "what originally appeared to be exceptions to the general rule, based upon notions of prescriptive rights, or possibly occupation . . . now appear as illustrations of a general principle. . . . [The] outcome was the result of a conflict of economic interests, and in this logic has no necessary part."[2]

Among the practical difficulties arising from this attitude is that mentioned by Professor Lewis Alexander in his essay on offshore claims in the collection of papers he has edited under the title *Law of the Sea*. He asks: "As the outer limits of this 'legally-defined" shelf move into deeper and deeper waters would the fishermen expect their shelf to expand accordingly, or might governments eventually find themselves talking about *two* continental shelves?"[3] In the case of Canada's northwest, it can easily lead to delimitation problems as between herself and the Soviet Union. In this connection the point made Dr. Slouka in his *International Custom and the Continental Shelf* becomes of some relevance. He is concerned with examining the problem on a bilateral as distinct from a unilateral standpoint. He comments: "As soon as one adopts for the study of an international customary rule the method of

1 Gullion, *Uses of the Sea* 74.
2 *Id.*, at 36-7.
3 Alexander, *The Law of the Sea* 80.

bilaterally oriented inquiry, the notion of a broadly conceived, non-technical estoppel describing the legal customary relationship of two or more states is bound to emerge. The term 'estoppel', as used here . . ., is not intended to signify a simple one-sided legal bar merely hindering state A from obtaining, through its own inconsistency or a policy reversal, an undue advantage at the expense of state B which has relied on the policy representations of state A and would suffer damage by A's change of policy. The estoppel, operating as a preclusion capable of limiting a state's alternatives, may be the eventual consequences of a number of legal relationships created by unilateral acts of states—policy statements and actions, protests, acquiescences or, eventually, by such unilateral yet parallel behavior of two or more states as to indicate consensus and an implied agreement."[4] It may well be, therefore, that Canada, while watching more closely than she has done in the past the actions and statements of both her Arctic neighbours, may have to be more careful as to who speaks for her in this matter and what is said.

Apart from dealing with the continental shelf, Dr. Bowett's *Law of the Sea* surveys the other Conventions signed at Geneva in 1958 and discusses in addition such community problems as pollution, access to the sea by landlocked states—he points out that the 1965 Convention on Transit Trade of Land-Locked States virtually left the position where it was and "represents no substantial reconciliation of the conflicting interest",[5]—'pirate' radio stations and flags of convenience, in which connection he puts into words a point not usually emphasised: "The position of the United States is of particular interest, since it is generally opposed to that of the European States: the U.S.A. is, in other words, 'sympathetic' to the use of flags of convenience. The reason, frankly admitted although not entirely popular with the U.S. Trade Unions, is simply this: that in time of war the U.S.A. would need to call on a vast mercantile fleet, that U.S. shipowners cannot in time of peace build, maintain and operate a fleet of this size under the U.S. flag, given the high costs of so doing, and that it is therefore necessary for these fleets to be operated under flags of convenience until such time as the U.S.A. would 'requisition' them in time of war. We thus have again, as so often in the law of the sea, a conflict of interests which is primarily economic, but which involves considerable security aspects."[6]

Dr. Alexander's symposium is likewise concerned with a number of these conflicts. The volume consists of papers delivered at a conference held in 1966 by the Law of the Sea Institute of the University of Rhode Island and, apart from Dr. Alexander's own problems of offshore limits, it discussed issues concerning conservation of resources; distribution of such resources; national interests in coastal waters—there is in Canada a familiar ring to Mr. Christy's statement that "the national interest in our [United States] coastal waters is to establish boundaries as far out into the ocean as we can get away with and establish exclusive jurisdiction over everything therein to the United States. The trouble with this parochial view is that whatever the United States can do in

4 Slouka, *International Custom and the Continental Shelf* 300-301.
5 Bowett, *The Law of the Sea* 52.
6 *Id.*, at 58.

this respect it has to agree that other countries can do the same thing."[7] Nevertheless, "our national position is to minimize the width of the territorial sea over which any nation may exercise sovereignty and at the same time to reserve (primarily for mineral exploitation) the use of the shelf for our nationals";[8] sea-floor mining and sovereignty; freedom of navigation, and the like. All in all, although the conference was called primarily to consider offshore boundaries and zones, it considered most of the practical problems relating to uses of the sea, its bed and its regulation, particularly in so far as United States might be involved.

These four volumes provide a most useful overlook for the student of the international law of the sea, with the American Assembly collection being the least technical and Dr. Bowett providing a careful analysis of the Conventions, to form a background to the specialized study of a far-reaching character analyzed at the Conference of the Law of the Sea Institute.

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7 Alexander, *The Law of the Sea* 125.
8 *Id.*, at 311. *Per* Dr. Pontecoruo reflecting on the results of the conference.
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HISTORICAL FOUNDATIONS OF THE COMMON LAW. By S. F. C. Milsom. London: Butterworths. 1969. Pp. xiv and 466. $11.75.

Most legal history texts attempt a study of the English law and its development. They are orientated primarily toward the law itself. They may not always be an entirely introverted approach, giving so much of the social and general background as is necessary for a proper understanding of the subject. Such works as Potter's *Historical Introduction to English Law* (1958; 4th ed. by A. K. R. Kiralfy) and Plucknett's *Concise History of the Common Law* (1956; 5th ed.) follow this general pattern. It is a good, if traditional, approach. However, a new and perhaps more exciting approach is taken in this book produced by Professor Milsom. It is a book which concentrates on the historical foundations of the law and traces the genesis and growth of the rules from those foundations.

Professor Milsom's book has the avowed aim of presenting an interdisciplinary approach to the study of the history of the law. This approach is evident throughout the book and rarely does the author slip into an orthodox historical treatise. The social and economic background of legal institutions is evident throughout the book. It is natural to think that these might affect the law. However, the author's striving to produce a different approach occasionally produces odd results. Thus, the opening discussion in Chapter 9, which deals with Uses and Trusts of Land, is a curious digression into semantics.

Professor Milsom also traces the history of legal institutions. In most cases, he avoids plunging into the complicated details of the history. At some points, the reader may find himself becoming absorbed in the study of the development of some facet of the law when the author decides to leave that topic and turn to another. Happily, Professor Milsom has appended some notes of a supplementary nature and some